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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120120056-2055-01]

RIN 0648-XA797

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2012 Sector Operations Plans and Contracts, and Allocation of Northeast Multispecies Annual Catch Entitlements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This rule proposes 19 Northeast (NE) multispecies (groundfish) sector operations plans and contracts for fishing year (FY) 2012, and would allocate quotas of NE multispecies to the sectors. The NE Multispecies Fishery Management Plan (FMP) requires sectors to submit their operations plans and contracts to NMFS for approval or disapproval. Approval of a sector operations plan and contract is necessary for that sector to be allocated fish, and allows the sector members to be exempted from certain effort control regulations. If a sector operations plan and contract is not approved, the members of that sector must fish in the common pool and comply with all existing regulations. This rule also notifies the public that NMFS is extending the deadline to join a sector for FY 2012 through April 30, 2012. NMFS is soliciting comment on the proposed operations plans and contracts, and our proposal to grant 25 of the 49 exemptions requested, and deny the rest.

DATES: Written comments must be received on or before [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2011-0264, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2011-0264 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail: Submit written comments to Mark Grant, 55 Great Republic Drive, Gloucester, MA 01930.
- Fax 978-281-9135; *Attn:* Mark Grant

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Sector Policy Analyst, phone (978) 281-9145, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

The NE groundfish sector management system is a voluntary system that allocates a portion of groundfish stocks to self-selecting groups of permit holders, called sectors. Sector members are granted increased operational flexibility through exemptions from regulations in exchange for taking on additional responsibility. The annual allocations to sectors are called Annual Catch Entitlements (ACE) and are based on the collective fishing history of the sectors' members. Sectors are self-selecting, meaning each sector can choose its members. Sectors may pool harvesting resources and consolidate operations to fewer vessels, if they desire.

NMFS received operations plans and preliminary contracts for FY 2012 from 19 sectors (see Table 1). The Administrator of NMFS for the NE Region (Regional Administrator) has made a preliminary determination that the 19 sector operations plans and contracts are consistent with the goals of the FMP, and comply with the measures that govern operation of a sector. This proposed rule summarizes many of the sector requirements and solicits comments on the proposed operations plans, our proposal to grant 25 of the 49 regulatory exemptions requested by the sectors and deny the rest, and the environmental assessment (EA). Copies of the operations plans and contracts, and the EA are available at <http://www.regulations.gov> and from NMFS (see ADDRESSES).

Amendment 13 to the FMP (69 FR 22906, April 27, 2004) established a process for forming sectors within the groundfish fishery, implemented restrictions applicable to all sectors, and authorized allocation of a total allowable catch (TAC) for specific groundfish species to a

sector. Amendment 16 to the FMP (74 FR 18262, April 9, 2010) expanded sector management, revised the 2 existing sectors to comply with the expanded sector rules (summarized below), and authorized an additional 17, for a total of 19 sectors. Framework Adjustment (FW) 45 to the FMP (76 FR 23042, April 25, 2011) further revised the rules for sectors and authorized 5 new sectors (for a total of 24 sectors).

The FMP defines a sector as “[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [*sic*] in order to achieve objectives consistent with applicable FMP goals and objectives.” A sector’s TAC is referred to as an ACE. Regional Administrator approval is required for a sector to be authorized to fish and to be allocated an ACE for stocks of regulated NE multispecies. Each individual sector’s ACE for a particular stock represents a share of that stock’s annual catch limit (ACL) available to commercial NE multispecies vessels, and each ACE is based upon the landings history of permits participating in that sector.

Nineteen sectors submitted operations plans and sector contracts, and requested allocation of stocks regulated under the FMP for FY 2012. The submitted operations plans are similar to previously approved versions, but incorporate changes to incorporate the requested exemptions. Five sectors chose not to submit operations plans and contracts for FY 2012: The Georges Bank (GB) Cod Hook Sector; Northeast Fishery Sector I; the State of New Hampshire Permit Bank Sector; the Commonwealth of Massachusetts Permit Bank Sector; and the State of Rhode Island Permit Bank Sector. The State of Maine Permit Bank Sector, Northeast Fishery Sector IV and Sustainable Harvest Sector 3 would operate as private lease-only sectors. The

Sustainable Harvest Sector 3 has not explicitly prohibited fishing activity, and may transfer permits to active vessels. A separate rule (76 FR 77200, December 12, 2011) proposes Amendment 17, which would allocate ACE to state-operated permit banks without requiring those permit banks to comply with the administrative and procedural requirements for groundfish sectors.

Table1. Summary of the number of permits, active vessels, gear type, and area fished for the proposed FY 2012 sectors.\*

Sector	Permit Count	Number of Active Vessels	Gear Type(s) Fished	Area(s) Fished
Fixed Gear Sector	105	37	Gillnet: 45%	Gulf of Maine
			Hook Gear: 55%	Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
Maine Permit Bank Sector	8	0	N/A	N/A
NCCS	28	10	Trawl: 83%	Gulf of Maine
			Hook Gear: 17%	Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
NEFS 10	54	21	Trawl: 65%	Gulf of Maine
			Gillnets: 34%	Inshore Georges Bank
				Southern New England/Mid-Atlantic
NEFS 11	44	35	Trawl: 15%	Gulf of Maine
			Gillnet: 85%	Southern New England/Mid-Atlantic
NEFS 12	11	10	Trawl: 65%	Gulf of Maine
			Gillnet: 30%	Inshore Georges Bank
			Hook: 5%	
NEFS 13	38	29	Trawl: 96%	Gulf of Maine
			Gillnet: 4%	Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
NEFS 2	79	70	Trawl: 100%	Gulf of Maine
				Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid Atlantic
NEFS 3	83	35	Gillnet: 95%	Gulf of Maine
			Hook Gear: 5%	Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
NEFS 4	49	0	N/A	N/A
NEFS 5	29	22	Trawl: 100%	Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic

Table1 Continued. Summary of the number of permits, active vessels, gear type, and area fished for the proposed FY 2012 sectors.\*

Sector	Permit Count	Number of Active Vessels	Gear Type(s) Fished	Area(s) Fished
NEFS 6	19	4	Trawl: 100%	Gulf of Maine
				Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
NEFS 7	20	18	Trawl: 56%	Gulf of Maine
			Gillnet: 44%	Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
NEFS 8	20	12	Trawl: 100%	Gulf of Maine
				Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
NEFS 9	61	18	Trawl: 100%	Gulf of Maine
				Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
Port Clyde Community Groundfish Sector	42	32	Trawl: 46%	Gulf of Maine
			Gillnet: 54%	Inshore Georges Bank
				Offshore Georges Bank
Sustainable Harvest Sector 1	116	41	Trawl: 90%	Gulf of Maine
			Gillnet: 10%	Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
Sustainable Harvest Sector 3	19	0	Trawl: 100%	Gulf of Maine
				Inshore Georges Bank
				Offshore Georges Bank
				Southern New England/Mid-Atlantic
Tri-State Sector	18	6	Trawl: 83%	Gulf of Maine
			Gillnet: 16%	Inshore Georges Bank
			Hook gear: 1%	Offshore Georges Bank
				Southern New England/Mid-Atlantic

\* The data in this table is from the sector rosters submitted as of December 1, 2011, and is subject to change based on final sector rosters.

## Sector ACEs

As of December 1, 2011, 843 of the 1,475 eligible NE multispecies permits have preliminarily enrolled in a sector for FY 2012. These permits account for approximately 99 percent of the FY 2012 commercial groundfish sub-ACL. Table 1 includes a summary of permits enrolled in a sector as of December 1, 2011. Permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2012, to withdraw from a sector and fish in the common pool for FY 2012. NMFS will publish final sector ACEs and common pool sub-ACL totals, based upon final rosters, as soon as possible after the start of FY 2012.

Sector ACEs are calculated by summing the potential sector contributions (PSC) of a sector's members for a stock and then multiplying that percentage by the available commercial sub-ACL for that stock. Table 2 shows the cumulative percentage of each commercial sub-ACL each sector would receive, based on their rosters as of December 1, 2011. Tables 3 and 4 show the ACEs each sector would be allocated based on their December 1, 2011, sector rosters for FY 2012. The final ACEs, to the nearest pound, are provided to the individual sectors by NMFS and NMFS uses those final ACEs for monitoring sector catch. While the common pool does not receive a specific allocation of ACE, the common pool sub-ACLs have been included in each of these tables for comparison.

Individual permits are not assigned a PSC for Eastern GB cod or Eastern GB haddock; rather each sector's GB cod and GB haddock allocation is divided into a Western ACE and an Eastern ACE for each stock. A sector's Eastern GB cod and haddock ACEs are to be harvested exclusively in the Eastern U.S./Canada Area and are based on the sector's percentage of the GB cod and haddock ACLs. For example, if a sector is allocated 4 percent of the GB cod ACL and 6 percent of the GB haddock ACL, the sector is allocated 4 percent of the Eastern U.S./Canada



Area GB cod TAC and 6 percent of the Eastern U.S./Canada Area GB haddock TAC as its Eastern GB cod and haddock ACEs. These amounts are then subtracted from the sector's overall GB cod and haddock allocations to determine its Western GB cod and haddock ACEs.

At the start of FY 2012, NMFS will withhold 20 percent of each sector's FY 2012 ACE for each stock to allow time to process any FY 2011 ACE transfers and to determine whether the FY 2012 ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to accommodate an FY 2011 ACE overage by that sector. Sectors will be allowed to trade ACE for 2 weeks following the finalization of sector catch for FY 2012 to balance any overages. The New England Fishery Management Council (Council) and sector managers will be notified of this deadline in writing and the decision will be announced on the NMFS Northeast Regional Office (<http://www.nero.noaa.gov/>).

Table 2. Cumulative PSC (percentage) each sector would receive by stock for FY 2012.\*^

Sector Name	Permit Count	GB Cod †	GOM Cod	GB Haddock †	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder ‡	CC/GOM Yellowtail Flounder ‡	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Common	632	1.89	2.08	0.51	1.49	1.43	22.17	2.59	2.16	1.95	0.65	3.32	0.80	1.38	0.79
Fixed Gear Sector	105	28.32	2.22	6.35	1.35	0.01	0.30	1.91	0.55	0.84	0.03	2.22	2.90	5.86	7.86
Maine	8	0.11	0.42	0.01	0.08	0.00	0.00	0.31	0.64	0.34	0.00	0.87	0.02	0.18	0.22
NCCS	28	0.17	0.73	0.12	0.34	0.84	0.73	0.61	0.15	0.22	0.07	0.90	0.44	0.86	0.45
NEFS 10	54	1.19	5.99	0.31	2.61	0.02	0.55	14.55	2.09	3.70	0.02	29.39	0.57	0.98	1.52
NEFS 11	44	0.40	12.27	0.04	2.39	0.00	0.02	2.13	1.38	1.47	0.00	2.00	0.96	2.43	6.57
NEFS 12	11	0.02	2.43	0.00	0.86	0.00	0.00	0.48	0.75	0.61	0.00	0.32	1.06	2.50	2.96
NEFS 13	38	6.84	0.75	13.82	0.88	16.65	14.12	3.46	3.76	4.79	5.39	1.59	3.88	1.71	2.17
NEFS 2	79	5.88	18.27	11.63	16.50	1.87	1.41	19.04	7.93	12.76	3.16	18.25	15.87	6.28	12.13
NEFS 3	83	1.27	15.70	0.15	9.91	0.01	0.36	9.23	4.27	2.99	0.03	10.70	1.38	4.80	7.07
NEFS 4	49	4.12	8.63	5.31	8.28	2.16	2.36	5.06	9.26	8.48	0.69	5.11	6.63	8.00	5.83
NEFS 5	29	1.77	0.09	3.35	0.31	6.31	22.14	0.64	1.15	1.32	1.79	0.09	0.24	0.20	0.26
NEFS 6	19	2.85	2.48	2.92	3.81	2.70	5.17	2.87	3.80	5.09	1.42	3.69	5.31	3.91	3.29
NEFS 7	20	4.39	0.43	3.74	0.56	9.29	3.93	2.68	3.41	3.07	11.38	0.86	0.54	0.74	0.69
NEFS 8	20	6.14	0.50	5.72	0.21	10.94	5.60	6.43	1.65	2.55	14.57	3.39	0.54	0.51	0.60
NEFS 9	61	14.66	1.74	11.97	4.79	27.55	8.15	10.65	8.38	8.36	42.80	2.44	5.92	4.17	4.24
Port Clyde Community Groundfish Sector	42	0.11	4.54	0.04	2.52	0.00	0.66	0.94	7.42	4.99	0.00	1.40	2.49	4.26	3.73
Sustainable Harvest Sector 1	116	18.78	19.84	32.20	42.37	12.55	8.09	12.76	39.51	34.42	15.90	9.57	50.24	51.01	39.52
Sustainable Harvest Sector 3	19	0.43	0.56	0.37	0.28	0.44	2.89	2.32	0.80	1.20	0.17	2.50	0.22	0.23	0.07
Tri-State Sector	18	0.68	0.36	1.45	0.44	7.24	1.35	1.33	0.93	0.85	1.92	1.40	0.00	0.02	0.03

\* The data in this table are based on signed roster contracts as of December 1, 2011.

^ Percentages have been rounded to two decimal places this table, but seven decimal places are used in calculating ACEs. In some cases, this table shows a sector allocation of 0 percent of an ACE, but that sector is allocated a small amount of that stock.

† For FY 2012, 14.66 percent of the GB cod ACL would be allocated for the Eastern U.S./Canada Area, while 58.31 percent of the GB haddock ACL would be allocated for the Eastern U.S./Canada Area.

‡ SNE/MA Yellowtail Flounder refers to the SNE/Mid-Atlantic stock. CC/COM Yellowtail Flounder refers to the Cape Cod/GOM stock.

Table 3. Proposed ACE (in tons), by stock, for each sector for FY 2012.\*^

Sector Name	Permit Count	GB Cod East	GB Cod West	GOM Cod +	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Common	632	3	93	TBD	39	116	11	3	186	30	78	31	24	26	73	50	110
Fixed Gear Sector	105	51	1,387	TBD	482	1,440	10	0	3	22	20	13	1	17	266	212	1,093
Maine	8	0	5	TBD	1	2	1	0	0	4	23	5	0	7	2	7	31
NCCS	28	0	8	TBD	9	27	2	2	6	7	5	3	3	7	40	31	63
NEFS 10	54	2	58	TBD	24	71	19	0	5	168	76	59	1	232	52	35	211
NEFS 11	44	1	19	TBD	3	8	17	0	0	25	50	24	0	16	88	88	914
NEFS 12	11	0	1	TBD	0	1	6	0	0	6	27	10	0	2	97	90	412
NEFS 13	38	12	335	TBD	1,048	3,131	6	40	118	40	136	76	201	13	356	62	302
NEFS 2	79	10	288	TBD	882	2,636	119	4	12	220	287	204	118	144	1,457	227	1,686
NEFS 3	83	2	62	TBD	11	33	71	0	3	106	154	48	1	84	126	174	983
NEFS 4	49	7	202	TBD	403	1,204	60	5	20	58	335	135	26	40	608	290	811
NEFS 5	29	3	86	TBD	254	758	2	15	185	7	41	21	67	1	22	7	36
NEFS 6	19	5	140	TBD	222	662	27	6	43	33	137	81	53	29	487	142	457
NEFS 7	20	8	215	TBD	284	848	4	22	33	31	123	49	425	7	50	27	95
NEFS 8	20	11	301	TBD	434	1,296	2	26	47	74	60	41	544	27	49	18	83
NEFS 9	61	26	718	TBD	908	2,712	35	66	68	123	303	133	1,598	19	543	151	590
Port Clyde Community Groundfish Sector	42	0	5	TBD	3	8	18	0	6	11	268	80	0	11	228	154	518
Sustainable Harvest Sector 1	116	34	920	TBD	2,442	7,297	305	30	68	147	1,428	549	594	75	4,610	1,846	5,494
Sustainable Harvest Sector 3	19	1	21	TBD	28	83	2	1	24	27	29	19	6	20	20	8	10
Tri-State Sector	18	1	33	TBD	110	328	3	17	11	15	34	14	72	11	0	1	5

\*The data in this table are based on signed roster contracts as of December 1, 2011. Numbers are rounded to the nearest ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE for each stock for up to 61 days.

† The sector ACEs for GOM cod will be determined (TBD) after the ACL is set by FW 47.

Table 4. Proposed ACE (in metric tons), by stock, for each sector for FY 2012.\*^

Sector Name	Permit Count	GB Cod East	GB Cod West	GOM Cod +	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Common	632	3	84	TBD	35	105	10	3	168	27	71	28	22	24	66	45	99
Fixed Gear Sector	105	46	1,258	TBD	437	1,306	9	0	2	20	18	12	1	16	242	192	992
Maine	8	0	5	TBD	1	2	1	0	0	3	21	5	0	6	2	6	28
NCCS	28	0	8	TBD	8	25	2	2	6	6	5	3	2	6	37	28	57
NEFS 10	54	2	53	TBD	21	64	17	0	4	152	69	54	1	210	47	32	191
NEFS 11	44	1	18	TBD	2	7	16	0	0	22	45	21	0	14	80	80	829
NEFS 12	11	0	1	TBD	0	1	6	0	0	5	25	9	0	2	88	82	373
NEFS 13	38	11	304	TBD	951	2,840	6	36	107	36	123	69	182	11	323	56	274
NEFS 2	79	10	261	TBD	800	2,391	108	4	11	199	260	185	107	131	1,321	206	1,529
NEFS 3	83	2	56	TBD	10	30	65	0	3	97	140	43	1	77	115	158	892
NEFS 4	49	7	183	TBD	366	1,092	54	5	18	53	304	123	24	37	552	263	736
NEFS 5	29	3	78	TBD	230	688	2	14	168	7	38	19	61	1	20	6	33
NEFS 6	19	5	127	TBD	201	601	25	6	39	30	125	74	48	26	442	128	415
NEFS 7	20	7	195	TBD	257	769	4	20	30	28	112	44	385	6	45	24	87
NEFS 8	20	10	273	TBD	393	1,175	1	24	43	67	54	37	493	24	45	17	75
NEFS 9	61	24	651	TBD	823	2,461	31	60	62	111	275	121	1,450	17	493	137	535
Port Clyde Community Groundfish Sector	42	0	5	TBD	3	8	16	0	5	10	243	72	0	10	207	140	470
Sustainable Harvest Sector 1	116	30	834	TBD	2,215	6,620	277	27	61	133	1,295	498	539	68	4,182	1,675	4,984
Sustainable Harvest Sector 3	19	1	19	TBD	25	75	2	1	22	24	26	17	6	18	18	7	9
Tri-State Sector	18	1	30	TBD	100	298	3	16	10	14	30	12	65	10	0	1	4

\*The data in this table are based on signed roster contracts as of December 1, 2011. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE for each stock for up to 61 days.

† The sector ACEs for GOM cod will be determined (TBD) after the ACL is set by FW 47.

## Sector Operations Plans and Contracts

NMFS received nineteen sector operations plans and contracts by the September 1, 2011, deadline, and subsequently received preliminary rosters by the December 1, 2011, deadline for FY 2012. Each sector has elected to submit a single document that is both the sector's contract and the sector's operations plan. Therefore, these submitted operations plans not only contain the rules under which each sector would fish, but also provide the legal contract that binds the sector's members to the sector and its operations plan.

Each sector conducts fishing activities according to its approved operations plan; however, each operations plan and sector member must comply with the regulations governing sectors, which are found at § 648.87. All permit holders with a limited access NE multispecies permit that was valid as of May 1, 2008, are eligible to participate in a sector, including holders of inactive permits currently held in confirmation of permit history (CPH). While membership in each sector is voluntary, each member (and his/her permits enrolled in the sector) must remain with the sector for the entire FY, and cannot fish in the NE multispecies days-at-sea (DAS) program outside of the sector (i.e., in the common pool) during the FY. Participating vessels are required to comply with all pertinent Federal fishing regulations, except as specifically exempted by a letter of authorization (LOA) issued by the Regional Administrator. Sector operations plans may be amended in-season if a change is necessary and agreed to by NMFS, provided the change is consistent with the sector administration provisions. These changes are included in updated LOAs issued to sector members and through amendments to the approved operations plan.

Sectors are allocated all large-mesh groundfish stocks for which members have landings history, with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and the Southern New England/Mid-Atlantic (SNE/MA) stock of winter flounder. Atlantic halibut,

ocean pout, northern windowpane flounder, and southern windowpane flounder are not allocated to sectors because these stocks have small ACLs, and vessels have limited landings history. Allocating these stocks to sectors would complicate monitoring of sector operations and would require a different scheme for determining each permit's potential sector contribution.

Sector vessels are required to retain all legal-sized allocated groundfish, unless an exemption is granted allowing sector vessels to discard legal-sized unmarketable fish at sea. Catch (including discards) of all allocated groundfish stocks by a sector's vessels would count against the sector's ACE, unless the catch is an element of a separate ACL sub-component, such as groundfish caught when fishing in an exempted fishery, or yellowtail flounder caught when fishing in the Atlantic sea scallop fishery. Sector vessels fishing for monkfish, skate, lobster (with non-trap gear), and spiny dogfish when on a sector trip (e.g., not fishing under provisions of a NE multispecies exempted fishery) would have their groundfish catch (including discards) on those trips debited against the sector's ACE. Ratios to calculate discards on unobserved sector trips would be determined by NMFS based on observed trips.

Each sector is required to ensure that its ACE is not exceeded during the FY. Amendment 16 required sectors to develop independent third-party dockside monitoring programs (DSM) to verify landings at the time they are weighed by the dealer, and to certify that the landing weights are accurate as reported by the dealer. FW 45 sets the required coverage level for DSM to the level that NMFS could fund. For FY 2012, NMFS will not fund a DSM program; therefore, the DSM level for FY 2012 is zero. Amendment 16 also required that sectors design, implement, and fund an at-sea monitoring (ASM) program beginning in FY 2012. However, for 2012 NMFS will fund and operate an ASM program for all sectors. The ASM coverage rate target is 17 percent, in addition to the expected 8-percent coverage rate of the

Northeast Fishery Observer Program (NEFOP). These two programs are expected to result in coverage of 25 percent of all sector trips and will be the basis for calculating discards by sector vessels. This level of observer coverage has been considered sufficient to monitor sector fishing activity for purposes of calculating when ACLs have been achieved.

Sectors are required to monitor their landings and available ACE, and submit weekly catch reports to NMFS. In addition, the sector manager is required to provide NMFS with aggregate sector reports on a daily basis when a threshold (specified in the operations plan) is reached. Once a sector's ACE for a particular stock is caught, a sector is required to cease all fishing operations in that stock area until it could acquire additional ACE for that stock. ACE may be transferred between sectors, but ACE transfers to or from common pool vessels is prohibited. Each sector must submit an annual report to NMFS and the Council within 60 days of the end of the FY detailing the sector's catch (landings and discards by the sector), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts from the sector, as directed by NMFS.

Each sector contract provides procedures to enforce the sector operations plan, explains sector monitoring and reporting requirements, presents a schedule of penalties, and provides authority to sector managers to issue stop fishing orders to sector members that violate provisions of the operations plan and contract. Sector members can be held jointly and severally liable for ACE overages, discarding of legal-sized fish, and/or misreporting of catch (landings or discards). Each sector operations plan submitted for FY 2012 states that the sector will withhold an initial reserve from the sector's sub-allocation to each individual member to prevent the sector from exceeding its ACE. Each sector contract also details the method for initial ACE allocation to sector members; for FY 2012, each sector has proposed that each sector member could harvest

an amount of fish equal to the amount each individual member's permit contributed to the sector's ACE.

Amendment 16 contains several “universal” exemptions that apply to all sectors. These universal exemptions apply to: Trip limits on allocated stocks; the GB Seasonal Closure Area; NE multispecies DAS restrictions; the requirement to use a 6.5-inch (16.5-cm) mesh codend when fishing with selective gear on GB; and portions of the Gulf of Maine (GOM) Rolling Closure Areas.

Sectors may request additional exemptions from NE multispecies regulations through their sector operations plan. Amendment 16 prohibits sectors from requesting exemptions from year-round closed areas (CA), permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements or DSM requirements). If an exemption is granted to a sector, each sector vessel is issued a LOA by NMFS authorizing the exemption for each such vessel.

#### Requested FY 2012 Exemptions

A total of 49 exemptions from the NE multispecies regulations have been requested by sectors through their FY 2012 operations plans. These requests are grouped into several categories in this rule: Exemptions previously approved that we proposed to approve for FY 2012 (numbers 1-16); new exemption requests we proposed to approve for FY 2012 (numbers 17-25); and requested exemptions that we propose to deny because they are prohibited (numbers 26-38), were previously rejected and no new information was provided (numbers 39-46), or because they may jeopardize rebuilding of the GOM cod stock (numbers 47-49). The recent GOM cod stock assessment determined the GOM cod stock is overfished and undergoing



overfishing, which requires re-evaluation of management of the stock. A full discussion of the 25 exemptions proposed for approval appears below.

#### Exemptions We Propose To Approve In FY 2012

In FY 2011, sectors were exempted from the following; and these exemptions have again been requested for FY 2012: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) limits on the number of gillnets imposed on Day gillnet vessels; (4) prohibition on a vessel hauling another vessel's gillnet gear; (5) limits on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; (6) limits on the number of hooks that may be fished; (7) DAS Leasing Program length and horsepower restrictions; (8) the GOM Sink Gillnet Mesh Exemption January through April; (9) extension of the GOM Sink Gillnet Mesh Exemption through May; (10) prohibition on discarding; (11) daily catch reporting by sector managers for sector vessels participating in the CA I Hook Gear Haddock Special Access Program (SAP); (12) gear requirements in the U.S./Canada Management Area; (13) powering vessel monitoring systems (VMS) while at the dock; (14) DSM for vessels fishing west of 72° 30' W. long.; (15) DSM for Handgear A-permitted sector vessels; and (16) DSM for monkfish trips in the monkfish Southern Fishery Management Area (SFMA).

In addition, sectors have requested exemptions from the following requirements in FY 2012: (17) Seasonal restrictions for the Eastern U.S./Canada Haddock SAP; (18) seasonal restriction for the CA II Yellowtail Flounder/Haddock SAP; (19) prohibition on fishing inside and outside of the CA I Hook Gear Haddock SAP while on the same trip; (20) maximum ACE carry-over provision; (21) ACE buffer provision; (22) 6.5-inch (16.5-cm) minimum mesh size requirement for trawl nets; (23) minimum fish size provisions for haddock; (24) prohibition on a

vessel hauling another vessel's hook gear; and (25) the requirement to declare intent to fish in the Eastern U.S./ Canada SAP and the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock. We propose to approve the above 25 exemption requests for FY 2012.

#### Exemptions We Proposed To Deny For FY 2012

We propose denying exemptions from the following 13 requirements because they are prohibited by FMP regulations: (26) Year-round access to the Cashes Ledge Closure Area; (27) year-round access to CA I; (28) year-round access to CA II; (29) year-round access to the Western GOM Closure Area; (30) extrapolation of discarded fish pieces across strata; (31) authorization to use video monitoring in place of ASM; (32) all hail requirements; (33) year-round access to the Eastern U.S./Canada Area; (34) ASM for sector vessels; (35) ASM for trips targeting dogfish; (36) ASM for hook-only and Handgear A vessels; (37) ASM for extra-large mesh gillnet vessels; and (38) the ASM standard for random trip selection.

We propose denying exemptions from the following 8 requirements because they were previously rejected, and sector applicants provided no new information: (39) minimum fish sizes to allow 100-percent retention; (40) minimum fish sizes to retain 12-inch (30.5-cm) yellowtail flounder; (41) VMS messages be sent directly to NMFS; (42) weekly catch report requirements; (43) prohibition on pair trawling; (44) minimum hook size; (45) 6.5-inch (16.5-cm) minimum mesh size for trawls to allow 5-inch (12.7-cm) mesh when targeting redfish; and (46) to submit a sector roster by the deadline. Exemptions 39 through 46 are not analyzed in the EA because no new information was available to change the analyses previously published in past EAs.

Detailed information on these exemption requests and the reasons they were previously denied is contained in the proposed and final sector rules for FY 2010 (74 FR 68015, December 22, 2009,

and 75 FR 18113, April 9, 2010, respectively) and the proposed and final sector rules for FY 2011 (76 FR 10852, February 28, 2011, and 76 FR 23076, April 25, 2011, respectively).

We propose denying exemptions from the following 3 requirements because they may jeopardize rebuilding of the GOM cod stock: (47) the April GOM Rolling Closure Area (RCA); (48) the May GOM RCA; and (49) the June GOM RCA. The draft EA contains analysis of exemptions 47 through 49 that was developed prior to the recent GOM cod stock assessment. NMFS is not proposing these exemptions because of the recent stock assessment. Therefore, the analysis will not be included in the final EA and the final EA will list these exemptions as considered, but rejected.

NMFS solicits public comment on the proposed sector operations plans and our proposal to grant 25 of the 49 requested exemptions, and deny the rest, as well as the EA prepared for this action. NMFS is particularly interested in receiving comments on the proposed exemptions from SAP seasons (numbers 17 and 18) and ACE carryover limits (number 20) because of concerns regarding the potential impacts of these exemptions.

On February 3, 2012, NMFS listed the GOM distinct population segment (DPS) of Atlantic sturgeon as threatened, and listed the New York Bight, Chesapeake Bay, Carolina, and South Atlantic DPSs of Atlantic sturgeon as endangered. The Biological Opinion for the NE multispecies fisheries will be reinitiated, and additional evaluation will be included to describe any impacts of the fisheries on Atlantic sturgeon and define any measures needed to mitigate those impacts, if necessary. NMFS anticipates that any measures, terms and conditions included in an updated Biological Opinion will further reduce impacts to the species and that the Biological Opinion will be completed before the beginning of the 2012 NE multispecies fishing year on May 1, 2012.

## Proposed Exemptions - Regulations That Were Previously Exempted For FY 2011

### 1. 120-Day Block Out Of The Fishery Requirement For Day Gillnet Vessels

The requirement for Day gillnet vessels to take 120 days out of the fishery was implemented in 1997 under FW 20 (62 FR 15381, April 1, 1997) to help ensure that management measures for Day gillnet vessels were comparable to effort controls placed on other fishing gear types, because gillnets continue to fish as long as they are in the water. Regulations at § 648.82(j)(1)(ii) require that each NE multispecies gillnet vessel declared into the Day gillnet category declare and take 120 days out of the non-exempt gillnet fishery. Each period of time taken out of the fishery must be a minimum of 7 consecutive days, and at least 21 of the 120 days must be taken between June 1 and September 30. An exemption from this requirement was previously approved for FYs 2010 and 2011 because this measure was designed to control fishing effort and, therefore, is no longer necessary for sectors because their ACEs limit overall fishing mortality. For additional information pertaining to this exemption and other exemptions first approved in FY 2010, please refer to the proposed and final sector rules for FY. This exemption would increase the operational flexibility of sector vessels and would be expected to increase profit margins of sector fishermen.

### 2. 20-Day Spawning Block

Vessels are required to declare out and be out of the NE multispecies DAS program for a 20-day period each calendar year between March 1 and May 31, when spawning is most prevalent in the GOM (§ 648.82(g)). This regulation was developed to reduce fishing effort on spawning groundfish stocks and an exemption was approved for FYs 2010 and 2011 because the sectors' ACE will restrict fishing mortality, making this measure no longer necessary as an effort

control. Exempting sectors from this requirement would provide vessel owners with greater flexibility to plan operations according to fishing and market conditions.

### 3. Limit On The Number Of Gillnets For Day Gillnet Vessels

The NE Multispecies FMP limits the number of gillnets a Day gillnet vessel may fish in the groundfish regulated mesh areas (RMA). The limits are specific to the type of gillnet and the RMA: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)); and 75 gillnets in the Mid-Atlantic (MA) RMA (§ 648.80(b)(2)(iv)). This exemption was previously approved in FYs 2010 and 2011 to allow sector vessels to fish up to 150 nets (any combination of flatfish or roundfish nets) in any RMA to provide greater operational flexibility to sector vessels in deploying gillnet gear. This measure was designed to control fishing effort and, therefore, is no longer necessary for sectors because their ACEs limit overall fishing mortality.

### 4. Prohibition On A Vessel Hauling Another Vessel's Gillnet Gear

Regulations at §§ 648.14(k)(6)(ii)(A) and 648.84(a) specify the manner in which gillnet gear must be tagged, requiring that information pertinent to the vessel owner or vessel be permanently affixed to the gear. No provisions exist in the regulations allowing for multiple vessels to haul the same gear. An exemption from this regulation was previously approved in FYs 2010 and 2011 to allow a sector to share fixed gear among sector vessels, thereby reducing costs. Consistent with the exemption as originally approved, the sectors requesting this exemption have proposed that all vessels utilizing community fixed gear be jointly liable for any violations associated with that gear. Additionally, each member intending to haul the same gear will be required to tag the gear with the appropriate gillnet tags, consistent with § 648.84(a).

## 5. Limit On The Number Of Gillnets That May Be Hauled On GB When Fishing Under A Groundfish/Monkfish DAS

Regulations at § 648.80(a)(4)(iv) prohibiting Day gillnet vessels fishing on a groundfish DAS from possessing, deploying, fishing, or hauling more than 50 gillnets on GB were implemented as a groundfish mortality control under Amendment 13 in 2004. NMFS granted an exemption from the limit on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish in FYs 2010 and 2011 because the prohibition was designed to control fishing effort and, therefore, is no longer necessary for sectors because their ACEs limit overall fishing mortality. This exemption allows gillnets deployed under the Monkfish FMP to be hauled more efficiently by vessels that are issued permits under both the multispecies and the monkfish FMPs.

## 6. Limits On The Number Of Hooks That May Be Fished

Vessels are prohibited from fishing or possessing more than 2,000 rigged hooks in the GOM RMA, more than 3,600 rigged hooks in the GB RMA, more than 2,000 rigged hooks in the SNE RMA, or more than 4,500 rigged hooks in the MA RMA (§§ 648.80(a)(3)(iv)(B)(2), 648.80(a)(4)(iv)(B)(2), 648.80(b)(2)(iv)(B)(1), and 648.80(c)(2)(v)(B)(1), respectively). This measure was initially implemented in 2002 through an interim action (67 FR 50292, August 1, 2002), and made permanent through Amendment 13, to control fishing effort and, therefore, is no longer necessary for sectors because their ACEs limit overall fishing mortality. An exemption from the number of hooks that a vessel may fish was approved for FYs 2010 and 2011 to allow sector vessels to more efficiently harvest ACE. This exemption was also previously granted to the GB Cod Hook Sector in FYs 2004-2009.

## 7. DAS Leasing Program Length And Horsepower Restrictions

While sector vessels are exempt from the requirement to use NE multispecies DAS to harvest groundfish, sector vessels are allocated, and must use, NE multispecies DAS for specific circumstances. For example, the Monkfish FMP requires that limited access monkfish Category C and D vessels harvesting more than the incidental monkfish possession limit must fish under both a monkfish DAS and a NE multispecies DAS. Therefore, sector vessels may still use, and lease, NE multispecies DAS.

NMFS granted an exemption from the DAS Leasing Program length and horsepower baseline restrictions (§ 648.82(k)(1)(ix)) on DAS leases between vessels within an individual sector, as well as between vessels in different sectors with this exemption, in FYs 2010 and 2011. The DAS Leasing Program restricted transfers of DAS between vessels of different sizes to the existing replaced vessel upgrade restrictions because of concerns about how DAS leases might change the character of the fishery. Groundfish mortality and fishing effort of sector vessels is no longer controlled by DAS, but is instead controlled only by the sector's available ACE. There are no vessel size restrictions on use of a sector's ACE, so continuing the DAS Leasing Program restrictions is no longer an effective method to maintain the character of the NE multispecies fleet. Further, exemption from this restriction allows sector vessels greater flexibility in the utilization of ACE and DAS. ACE and DAS regulations would ensure negligible impacts to allocated target species, and non-allocated target species and bycatch by capping overall mortality. Even with these exemptions, sectors would still be subject to non-allocated target species and bycatch management measures to limit their catch and control mortality. Providing greater flexibility in the distribution of DAS could result in increased effort on non-allocated target stocks, such as monkfish and skates. However, sectors predicted little consolidation and redirection of effort in their FY 2012 operations plans. In addition, any

potential redirection in effort would be restricted by the sector's ACE for each stock, as well as by effort controls in other fisheries (e.g., monkfish trip limits and DAS).

8. The GOM Sink Gillnet Mesh Exemption January Through April; and

9. Extension Of The GOM Sink Gillnet Mesh Exemption Through May

Exemptions 8 and 9 are discussed together because of their inter-relatedness; however, approval or disapproval of each of these exemptions is an independent decision. There is a minimum mesh size of 6.5-inch (16.5-cm) for gillnets in the GOM RMA (§ 648.80(a)(3)(iv)).

Minimum mesh size requirements have been used to reduce overall mortality on groundfish stocks, as well as to reduce discarding, and improve survival, of sub-legal groundfish.

Selectivity studies have indicated that 6.5-inch (16.5-cm) sink gillnets may not be effective at retaining haddock at the current legal minimum fish size. An exemption from this requirement was previously approved for FYs 2010 and 2011 to provide sector vessels the opportunity to potentially catch more GOM haddock, a fully rebuilt stock, during the months that haddock are most prevalent, and to provide sector participants the opportunity to more fully harvest their allocation of GOM haddock. This exemption was initially considered in a supplemental proposed and final rule to FY 2010 sector operations (75 FR 53939, September 2, 2010; and 75 FR 80720, December 23, 2010) and is functionally equivalent to a pilot program that was proposed by the Council in Amendment 16.

Together these exemptions allow sector vessels to use 6-inch (15.24-cm) mesh stand-up gillnets in the GOM RMA from January 1, 2013, to May 30, 2013, when fishing for haddock. The designation of this season is consistent with the original pilot program proposal and is the time period when haddock are most available in the GOM. Sector vessels utilizing this exemption would be prohibited from using tie-down gillnets in the GOM during this period.



Sector vessels may transit the GOM RMA with tie-down gillnets, provided they are properly stowed and not available for immediate use in accordance with one of the methods specified at § 648.23(b).

Day gillnet vessels in sectors granted the exemption from Day gillnet net limits, as explained under exemption request 3, will not be subject to the general net limit in the GOM RMA, and will be able to fish up to 150 nets in the GOM RMA. In 2011, NMFS authorized vessels granted both exemptions to fish up to 150 6-inch (15.24-cm) mesh stand-up gillnets in the GOM RMA. For FY 2012, NMFS proposes the same exemption and again requests public comment on the feasibility of allowing up to 150 nets when fishing under this exemption. The LOA issued to sector vessels that qualify for this exemption will specify the net restrictions to help ensure the provision is enforceable. There will be no limit on the number of nets that participating Trip gillnet vessels will be able to fish with, possess, haul, or deploy, during this period, because Trip gillnet vessels are required to remove all gillnet gear from the water before returning to port at the end of a fishing trip.

NMFS believes that impacts to allocated target stocks resulting from this exemption would be negligible, given that fishing mortality by sector vessels is restricted by an ACE for allocated stocks, capping overall mortality. For FY 2010, this exemption was not authorized until the effective date of the FY 2010 Supplemental Sector rule, published in January 2011. Data indicate few trips in FY 2011 used this exemption. In January through May 2011, 63 trips were taken, yielding a catch of 89,208 lb (40,464 kg) from sink gillnet vessels fishing with less than 6.5-inch (16.5-cm) mesh size in the GOM RMA. It is possible that a higher net limit for Day gillnet vessels participating in this program will increase the number of gillnets in the water at any one time and, therefore, potentially increase interactions with protected species. However,

potential negative impacts to protected species from this exemption are expected to be low because additional nets may result in greater efficiency, thus potentially reducing interactions with protected species. In addition, sector vessels utilizing this exemption would still be required to comply with all requirements of the Harbor Porpoise Take Reduction Plan and Atlantic Large Whale Take Reduction Plan.

#### 10. Prohibition Of Discarding

Amendment 16 contains this provision to ensure that the sector's ACE is accurately monitored. Sectors requested a partial exemption from this prohibition because of concerns that retaining and landing large amounts of unmarketable fish, including fish carcasses, creates operational difficulties and potentially unsafe working conditions for sector vessels at sea. The Regional Administrator considered a partial exemption from the requirement to retain all legal-sized fish in a proposed rule in FY 2010. However, due to problematic mid-season implementation issues, further consideration of this exemption was delayed until FY 2011. An exemption from this requirement was approved for FY 2011 to enhance operational flexibility, foster safer working conditions for sector vessels, and relieve the burden on sector vessels and their dealers to dispose of unmarketable fish.

Under this proposed exemption, all legal-sized unmarketable allocated fish would be accounted for in the overall sector-specific discard rates in the same way discards at sea of undersized fish are currently accounted for, based on trips observed by the NEFOP and ASM. If this exemption is approved, unmarketable fish discarded by a sector's vessels on observed trips will be deducted from that sector's ACE and incorporated into that sector's discard rates to account for discarding on unobserved trips. Vessels in a sector opting for this exemption will be required to discard all legal-sized unmarketable fish at sea (i.e., not just on select trips). Legal-

sized unmarketable fish would be prohibited from being landed to prevent the potential to skew observed discards. The discarding exemption, in combination with the enhanced reporting of legal-sized unmarketable fish, would improve the monitoring of this unmarketable portion of sector catch, particularly on unobserved sector trips.

#### 11. Daily Catch Reporting By Sector Managers For Vessels Participating In The CA I Hook Gear Haddock SAP

Sector vessels declared into the CA I Hook Gear Haddock SAP are required to submit daily catch reports to their sector manager, and their sector manager must report the catch information to NMFS on a daily basis (§ 648.85(b)(7)(v)(C)). This reporting requirement was originally implemented through FW 40A (69 FR 67780, November 19, 2004) to facilitate real-time monitoring of quotas by both the sector manager and NMFS. Amendment 16 grants authority to the Regional Administrator to determine if weekly sector reports were sufficient for the monitoring of most SAPs. Through the final rule implementing Amendment 16, the Regional Administrator alleviated reporting requirements for sector vessels participating in other Special Management Programs (SMPs), but reporting requirements were retained for the CA I Hook Gear Haddock SAP because NMFS must continue to monitor an overall haddock TAC that applies to sector and common pool vessels fishing in this SAP. An exemption was granted in FY 2011 to allow sector vessels participating in the CA I Hook Gear Haddock SAP to submit a daily VMS catch report directly to NMFS. This exemption is consistent with the requirement for common pool vessels participating in this SAP and provides NMFS with the timely information necessary to manage the SAP quota.

#### 12. Gear Requirements In The U.S./Canada Management Area

Any NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area must fish with either a Ruhle trawl, a haddock separator trawl, or a flounder trawl (§ 648.85(a)(3)(iii)). The final rule implementing Amendment 13 clarifies that the requirement to use a haddock separator trawl or a flounder trawl net was designed to “ensure that the U.S./Canada TACs are not exceeded. Because both the flounder net and haddock separator trawl are designed to affect cod selectivity, and because the cod TAC is specific to the Eastern U.S./Canada Area only, application of this gear requirement to the Western U.S./Canada Area is not necessary to achieve the stated goal.”

The option to utilize a Ruhle trawl in the Eastern U.S./Canada Area was initially implemented through several in-season actions, and was made permanent in Amendment 16. This gear configuration was originally authorized for its demonstrated ability to allow the targeting of haddock, an under-harvested stock, while reducing bycatch of cod and yellowtail flounder stocks, which were identified as overfished. The addition of the Ruhle Trawl to gear previously approved (haddock separator trawl and flounder trawl net) provided added flexibility to trawl vessels.

An exemption from this requirement was granted in FY 2011 to enhance operational flexibility of sectors because overall fishing mortality would continue to be restrained by the sector ACEs.

### 13. Requirement To Power A VMS While At The Dock

Sector vessels are required to have an operational VMS unit onboard (§ 648.10(b)(4)) that transmits accurate positional information (i.e., polling) at least every hour, 24 hr per day, throughout the year (§ 648.10(c)(1)(i)). Amendment 5 (59 FR 9872, March 1, 1994) first included the requirement for vessels to use VMS. While the requirement to use VMS was

delayed until implemented by FW 42 (72 FR 73274, December 27, 2007), NMFS supported polling to insure adequacy of monitoring requirements, address enforcement concerns, and because it could be beneficial in the event of an at-sea emergency.

An exemption from this requirement was granted in FY 2011 to lower costs associated with VMS for sector vessels. This exemption is administrative in nature and is anticipated to have negligible impacts beyond cost-savings. Vessels granted the exemption must continue to comply with other reporting requirements (trip end hails, VMS declarations, etc.) and must submit an appropriate powerdown VMS declaration, as explained on their LOA, any time the vessel is underway or away from the dock. In granting the exemption for FY 2011, the Regional Administrator reserved the right to revoke the exemption if it was determined the exemption was being misused or abused, and proposes to do so again if this exemption is granted in FY 2012.

#### 14. DSM Requirements For Vessels Fishing West Of 72°30' W. Long

In response to FY 2010 requests for exemption from the DSM requirement for vessels fishing in SNE and MA waters, the Regional Administrator requested that the Council consider establishing a geographic boundary outside of which DSM would not be required. The Council responded in FW 45 by removing DSM from the list of prohibited exemptions to allow sectors to request geographic- and gear-based exemptions from DSM. This exemption was granted in FYs 2010 and 2011 based on data showing that little groundfish is caught in the area.

Generally, sectors using this exemption must still comply with any DSM program specified by NMFS in FY 2012 (§ 648.87(b)(1)(v)). The required DSM coverage level for FY 2012 will be zero percent, because NMFS will not be funding DSM. However, should that change, then vessels would once again be subject to DSM. This exemption would reduce the burden of any DSM coverage level above zero.

#### 15. DSM Requirements For Handgear A-Permitted Sector Vessels

FW 45 removed the DSM requirements for common pool vessels with handgear (Categories HA and HB) or Small Vessel (Category C) permits. Consistent with that flexibility, NMFS exempted sector vessels with handgear permits (Category HA) from DSM requirements due to the comparatively small catch of these vessels and disproportionately high DSM costs they would incur.

In general, sectors must comply with any DSM program specified by NMFS in FY 2012 (§ 648.87(b)(1)(v)). The required DSM coverage level for FY 2012 will be zero percent because NMFS will not be funding DSM. However, should that change, then sector handgear vessels would once again be subject to DSM. This exemption would reduce the burden of any DSM coverage level above zero for sector handgear vessels.

#### 16. DSM Requirements For Monkfish Trips In The Monkfish SFMA

Several sectors requested exemptions for FY 2011 from DSM requirements for trips targeting monkfish, skate and/or dogfish. NMFS highlighted a number of operational concerns about exempting these trips in the proposed rule for FY 2011. In the final rule for FY 2011, NMFS approved an exemption from DSM for sector trips declared into the SFMA when fishing on a concurrent monkfish/NE multispecies DAS fishing with 10-inch (25.4-cm) or greater mesh, provided that the vessel fishes the entirety of its trip in the SFMA. This exemption was granted because of the small catch of these vessels and disproportionately high DSM costs they would incur.

Sectors must comply with any DSM program specified by NMFS in FY 2012 (§ 648.87(b)(1)(v)). The required DSM coverage level for FY 2012 will be zero percent because NMFS will not be funding DSM. However, should that change, then sector vessels would once

again be subject to DSM. This exemption would reduce the burden of any DSM coverage level above zero for a sector vessel fishing with 10-inch (25.4-cm) or greater mesh when fishing the entirety of its trip in the SFMA.

#### Proposed Exemptions - Additional Regulations With New Exemption Requests

##### 17. Seasonal Restriction For The Eastern U.S./Canada Haddock SAP

The Eastern U.S./Canada Haddock SAP was implemented by FW 40A in 2004 to provide an opportunity to target haddock while fishing on a Category B DAS in, and near, CA II (69 FR 67780, November 19, 2004). The SAP required vessels to use gear that reduced the catch of cod and other stocks of concern. The SAP had a season of May 1 through December 31 to reduce effort during periods of groundfish spawning. In 2006, FW 42 extended this SAP and shortened the season to August 1 through December 31 to reduce cod catch. Subsequent actions approved additional gear types for use in this SAP.

For sector vessels, the only benefit of this SAP is that it provides access to the northern tip of CA II. Amendment 16 exempts sectors from the gear requirements of this SAP because sector catch is constrained by ACEs, but sectors are still required to comply with reporting requirements and the restricted season from August 1 through December 31 (§ 648.85(b)(3)(iv)). Sectors argue that their catch is restricted by ACE and their access to the SAP area in the northern tip of CA II should not be seasonally restricted. Sectors further argue that impacts to the physical environment and essential fish habitat (EFH) will be negligible because any increase in effort will be minor and the portion of CA II included in this SAP is outside any habitat areas of particular concern (HAPC). NMFS has some concern that this exemption may have negative effects on allocated stocks by allowing an increase in effort in a time and place where those stocks, particularly haddock, aggregate to spawn.

Amendment 16 prohibits sectors from being granted exemptions from closed areas. NMFS requests comment on whether it is appropriate to exempt sectors from a SAP season, given that the portion of the SAP in the closed area is already open part of the year, or if the current prohibition on allowing exemptions from closed areas applies to SAPs.

#### 18. Seasonal Restriction For The CA II Yellowtail Flounder/Haddock SAP

The CA II Yellowtail Flounder/Haddock SAP was implemented by Amendment 13 in 2004 to provide an opportunity to target yellowtail flounder in CA II on a Category B DAS. The SAP required vessels to use either a flounder net or other gears approved for use in the Eastern U.S./Canada Area. The SAP season ran from June 1 through December 31. In 2005, FW 40 B extended this SAP and shortened the season to July 1 through December 31 to reduce interference with spawning yellowtail flounder (70 FR 31323, June 1, 2005).

Amendment 16 further revised this SAP by opening the SAP to target haddock from August 1 through January 31, when the SAP is not open to allow targeting of GB yellowtail flounder. Sectors are required to comply with the SAP reporting requirements and the restricted season of August 1 through January 31 (§ 648.85(b)(3)(iii)). When open only to target haddock, the flounder net is not authorized and only approved trawl gears or hook gear may be used. The gear requirements were implemented to avoid catching yellowtail flounder when the SAP was open only to the targeting of haddock.

Unlike the Eastern U.S./Canada Haddock SAP, the CA II Yellowtail Flounder/Haddock SAP provides access to a large area in CA II. Sectors are required to use the same approved gears as the common pool to reduce the advantage sector vessels have over common pool vessels. Sectors argue that their catch is restricted by ACE and their access to the SAP area in CA II should not be restricted.



The seasonal restriction on this SAP was put in place to allow vessels to target denser populations of yellowtail flounder and haddock while avoiding cod in the summer and spawning groundfish in the spring. Impacts to the physical environment and EFH would be negligible because any increase in effort would be minor and the portion of CA II included in this SAP is outside any HAPC. NMFS has some concern that this exemption could have negative effects on allocated stocks by increasing effort in a time and place where those stocks, particularly haddock, aggregate to spawn.

Amendment 16 prohibits sectors from being granted exemptions from closed areas. NMFS requests comment on whether it is appropriate to consider exemptions from a SAP season, given that the portion of the SAP in the closed area is already open part of the year, or if the current prohibition on allowing exemptions from closed areas applies to SAPs.

#### 19. Prohibition On Fishing Inside And Outside The CA I Hook Gear Haddock SAP While On The Same Trip

FW 40A established the CA I Hook Gear Haddock SAP. NE multispecies vessels fishing on a trip within this SAP are prohibited from deploying fishing gear outside of the SAP on the same trip when they are declared into the SAP (§ 648.85(b)(7)(ii)(G)). This restriction was established to avoid potential quota monitoring and enforcement complications that could arise when a vessel fishes both inside and outside the SAP on the same trip. This exemption request would allow sector vessels to fish both inside and outside the CA I Hook Gear Haddock SAP on the same trip. To identify catch from inside and outside the SAP on the same trip, sector vessels would be required to send NMFS a VMS catch report that specifically identifies GB haddock (and any other shared allocation) catch from inside the SAP prior to the end of the trip or within 24 hr of landing. Sectors are requesting this exemption to increase their operational flexibility

and efficiency. NMFS has no reason to believe that this particular catch report would be any less accurate than the existing sector catch reports.

## 20. Maximum ACE Carryover Provision

Amendment 16 allows each sector to carry over up to 10 percent of its original ACE allocation of each stock from one FY to the next, with the exception of GB yellowtail flounder (§ 648.87(b)(1)(i)(C)). Allowing a sector to carry over a portion of its allocation reduces concern that a sector may leave ACE uncaught out of concern it may accidentally exceed its ACE. An exemption was requested to allow sectors to carry over up to 50 percent of unused ACE into the following FY. Allowing sectors to carry over ACE would provide for greater flexibility in when and how they fish during a given FY.

NMFS has conducted a preliminary analysis of ACE carryover limits and the potential for overfishing in the subsequent year. Based on the preliminary analysis, there may be a possibility to allow sectors to carry over 11 percent to 30 percent of each stock's ACE (except GB yellowtail flounder and GOM cod) from one FY to the next, but only to the extent that there is sufficient information to conclude that such carryover does not result in overfishing, impede rebuilding objectives or threaten the health of the stock. Moreover, any such carryover must be consistent with Magnuson-Stevens Act requirements and the setting of ABCs and ACLs. This means that additional carryover must be factored into, and accounted for, in the setting of overfishing limits (OFL), allowable biological catches (ABC) and ACLs for any given fishing year. GB yellowtail flounder is excluded by Amendment 16 and its implementing regulations because it is a transboundary stock managed under the U.S./Canada Resource Sharing Understanding, and therefore has quotas set by an informal agreement between the Northeast Region of NMFS and the Maritimes Region of the Department of Fisheries and Ocean of Canada. In addition,

NMFS proposes to exclude GOM cod from any increase in the carry-over provision due to the results of a new stock assessment (SAW 53, 2012; copies available from NMFS, see ADDRESSES), which determined that GOM cod is overfished, overfishing is occurring, and is in poor condition; thus, raising concern about the long-term health of this stock.

The preliminary ACE carryover analysis considered seven groundfish stocks, representing a broad range of life spans and growth rates. A deterministic model was used to evaluate the effect of different percentages of ACE carryover on fishing mortality in the following year. The primary constraint on the model was that the percentage of ACE carryover could not allow overfishing in the following year. Despite a wide range of differences in biology among the stocks, the maximum carryover percentage was little affected by these differences. Instead, the primary factor affecting the maximum carryover percentage was the relationship between the ABC and the overfishing threshold in the following year. The NE multispecies FMP sets the ABC based on the target rate for fishing mortality being 75% of the mortality rate that would achieve maximum sustainable yield ( $F_{msy}$ ). If the actual fishing mortality rate in the following year is near the target fishing mortality rate (75% of  $F_{msy}$ ), then the maximum ACE carryover could be about 28 percent to 30 percent, while avoiding overfishing. The analysis further indicates that carryover at 28 percent to 30 percent would not undermine rebuilding programs or stock health, again, provided the actual fishing mortality rate does not exceed the target fishing mortality rate.

NMFS provided the analysis to the Council with a request that its Scientific and Statistical Committee (SSC) review it. In a letter dated January 20, 2012, the Council raised a number of questions about the preliminary analysis and the legality of such carryovers in light of Magnuson-Stevens Act requirements. These questions included:

1. Is it consistent with the Magnuson-Stevens Act to allow carryover that results in allocating an amount of fish greater than the ABC?
2. Is it consistent with the National Standards Guidelines to allow a carryover amount that reduces the amount of uncertainty buffer between the overfishing level and the ABC to zero without explicit concurrence of the SSC?
3. How does the variable recruitment of rebuilding stocks affect the analysis' assumptions about allowable ACE carryover?
4. If carryover allows catches to exceed the ABC for a rebuilding program, how is the rebuilding program affected?
5. If a stock ABC is declining, carryover may result in allocating an amount of fish greater than the over-fishing limit. Is this consistent with the Magnuson-Stevens Act?
6. Does a declining ABC affect the amount of permissible ACE carryover? and,
7. Do fluctuations in ABC need to be considered in setting permissible ACE carryover levels?

NMFS will consider any input from the SSC, if received in a timely manner, and the questions raised by the Council, to help determining whether increased carryover is justified for FY 2012 and, if so, at what level it should be set so that carryover does not result in overfishing, impede rebuilding objectives, or threaten the health of the stock, and otherwise satisfy the legal requirements for setting ABCs and ACLs. NMFS invites comments on the requests for additional carryover, including the preliminary analysis described above and the issues raised by the Council.

## 21. ACE Buffer Provision

Amendment 16 implemented the ACE buffer provision to ensure that each sector would have 20 percent of its ACE available to account for any potential overage from the previous year. At the beginning of each FY, NMFS withholds 20 percent of a sector's ACE for each stock for up to 61 days (i.e., through June 30), or longer (§ 648.87(b)(1)(iii)(C)). This hold gives NMFS time to finalize sector catch and ACE trades that take place after the end of the FY, and to apply any overage penalties to a sector that exceeded its ACE. Sectors are requesting to be exempted from this 20-percent ACE buffer restriction when a sector manager reports that the sector has not exceeded any of its ACE. Sectors seek to increase operational flexibility and efficiency to bring additional revenue into the sector.

NMFS has some concern with this request because it has no ability to verify whether a sector manager's report is accurate until the annual reconciliation process, as discussed above, is complete. Therefore, sectors could potentially exceed their ACE in a subsequent FY after an overage before the second year's ACE is reduced by the first year's overage. For example, if a sector was allocated 100 mt of a stock in year 1, but caught 120 mt, the sector would be required to pay back 20 mt in year two. However, if the sector fished its complete allocation for year 2 before NMFS discovered the overage from year 1, the sector would then have overfished the reduced year 2 allocation.

## 22. 6.5-Inch (16.5-Cm) Minimum Mesh Size Requirement For Trawl Nets

Minimum mesh sizes were initially adopted through interim rules in 2001 and 2002 (67 FR 21140, April 29, 2002; 67 FR 50292, August 1, 2002), and made permanent through Amendment 13. FW 42 further modified the mesh regulations in the SNE and MA RMAs to reduce discards of yellowtail flounder. The regulations at § 648.80 specify the minimum mesh size that may be used in fishing nets on vessels fishing in the GOM, GB, SNE, and MA RMAs.

Minimum mesh size restrictions have been used with other management measures to reduce overall mortality on groundfish stocks, as well as to reduce discarding, and improve survival, of sub-legal groundfish. These requirements were intended to protect spawning fish and increase the size of targeted fish.

This exemption would allow sector vessels to use 6-inch (15.2-cm) mesh codends on trawl nets to target redfish. The exemption is intended to increase the catch rate of redfish. The requesting sectors argue that this exemption could increase the operational flexibility of sector vessels and could increase profit margins of sector fishermen.

The sectors making the request have proposed that sector vessels participating in the directed redfish fishery be required to declare their intentions to the Sector Manager and NMFS at least 48 hr prior to departure, and that at-sea monitors be present on all trips using this exemption to monitor catch and bycatch. In addition, daily catch reports will be submitted to the Sector Manager to ensure that all catch is harvested within the sector's ACE. The exemption is intended to retain a greater proportion of redfish in the trawl codend.

This exemption is similar to exemptions requested and denied in previous years. This exemption could result in greater retention of sub-legal groundfish, as well as non-allocated species and bycatch. Habitat could also be negatively impacted due to the anticipated increased use of trawl gear. Should an exemption from minimum mesh size restrictions increase sub-legal groundfish bycatch by sector vessels, juvenile escapement, stock age structure, and overall mortality reduction objectives could be undermined. An exemption could raise additional equity concerns if sub-legal bycatch triggered management actions affecting the entire fishery, including non-sector vessels. Furthermore, an exemption from minimum mesh size restrictions could be difficult to enforce at-sea, because it would require enforcement personnel to

differentiate the appropriate mesh size applicable to exempt vessels from that applicable to non-exempt vessels.

NMFS is currently funding a study through the Northeast Cooperative Research Partners Program to investigate strategies and methods to sustainably harvest the redfish resource in the GOM through a network approach, including fishing enterprises, gear manufacturers, researchers, social and economic experts, and managers. This approach will include investigating success of various mesh sizes within the fishery. Given that the use of this smaller mesh could negatively impact spawning fish and populations of flounders, which the current minimum mesh sizes were intended to protect, NMFS has reservations about approving this exemption, until the results from this study can be considered.

### 23. Minimum Fish Size Provisions For Haddock

Commercial haddock catch must measure a minimum of 18 inches (45.7 cm) to be retained by a vessel (§ 648.83(a)(1)). This restriction includes whole fish or any part of a fish while possessed on board a vessel, with the exception of a small amount of fish (up to 25 lb (11.3 kg)) that each person on board may retain for at-home consumption (§ 648.83(a)(2)). The 18-inch (45.7-cm) minimum size for haddock was first implemented by an interim action in 2009 (74 FR 17030, April 13, 2009). This was a reduction from the previous minimum size of 19 inches (48.3 cm), designed to reduce discards and increase yield. The 18-inch (45.7-cm) minimum size was made permanent by Amendment 16.

Sectors requested an exemption from the minimum size regulation so they could land headed and gutted haddock that are less than 18 inches (45.7-cm) as a value-added product. This exemption would simply allow legal-sized fish that were previously landed whole to be landed headed, or headed and gutted. There would be no change to the actual size composition of the

catch. Regulations similar to this exist in other fisheries, such as monkfish. These fisheries use a conversion ratio to account for size and/or weight differences. If approved, NMFS would need to develop a ratio to account for the size/weight differences for haddock landed headed and/or headed and gutted. Allowing this exemption could present significant enforcement issues by allowing different legal minimum fish sizes at sea.

#### 24. Prohibition On A Vessel Hauling Another Vessel's Hook Gear

Current regulations prohibit one vessel from hauling another vessel's hook gear (§§ 648.14(k)(6)(ii)(B)). No provisions exist in the regulations allowing for multiple vessels to haul the same gear. The regulations facilitate the enforcement of existing hook regulations created as mortality controls, because a single vessel is associated with each set of gear. Sectors have requested an exemption from this prohibition to allow fishermen from within the same sector to haul each other's hook gear. All vessels participating in "community" fixed gear would be jointly liable for any violations associated with that gear. This joint liability would assist in the enforcement of regulations. The increased flexibility afforded by this exemption could increase efficiency.

#### 25. Requirement To Declare Intent To Fish In The Eastern U.S./Canada SAP And The CA II Yellowtail Flounder/Haddock SAP Prior To Leaving The Dock

NE multispecies vessels are required to declare that they will be fishing in either the Eastern US/CA Haddock SAP or the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock (§ 648.85(b)(8)(v)(D) and § 648.85(b)(3)(v)). Framework 40A implemented this measure so that vessels fishing exclusively in those areas could be credited DAS for their transit time to and from these SAPs. Sectors are requesting an exemption from having to declare their intent to fish in those areas prior to departing the dock because they are no longer limited by NE



multispecies DAS and their catch is limited to their ACE. Sectors seek to increase their efficiency with this exemption.

#### Requested Exemptions We Propose to Deny Because They Are Prohibited

Amendment 16 contains several “universal” exemptions applicable to all sectors and authorized sectors to request additional exemptions from NE multispecies regulations through their sector operations plans. However, Amendment 16 also prohibits sectors from requesting exemptions from year-round closed areas, permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements or DSM requirements). Exemptions were requested by several sectors that are specifically prohibited (e.g., access to permanent closed areas) or that fall outside of the NE multispecies regulations (e.g., Eastern U.S./Canada in-season actions).

In a letter dated September 1, 2010, NMFS notified the Council that NMFS interprets the reporting requirement exemption prohibition broadly to apply to all monitoring requirements, including ASM, DSM, ACE monitoring, and the counting of discards against sector ACE. In this letter (copies are available from NMFS, see ADDRESSES), NMFS also requested that the Council define which regulations sectors may not be exempted from. On November 18, 2010, the Council addressed this letter by voting to include in FW 45 the removal of DSM from the list of regulations that sectors may not be exempted from, but did not take such action for ASM, ACE monitoring, VTR regulations, or counting of discards against ACE.

We propose denying, and do not analyze in the EA, exemptions from the following 13 requirements because they are prohibited: (26) Year-round access to the Cashes Ledge Closure Area; (27) year-round access to CA I; (28) year-round access to CA II; (29) year-round access to the Western GOM Closure Area; (30) from extrapolation of discarded fish pieces across strata;

(31) authorization to use video monitoring in place of ASM; (32) from hail requirements; (33) year-round access to the Eastern U.S./ Canada Area; (34) from ASM for sector vessels; (35) from ASM for trips targeting dogfish; (36) from ASM for hook-only and Handgear A vessels; (37) from ASM for extra-large mesh gillnet vessels; and (38) from the ASM standard for random trip selection.

Requested Exemptions We Propose to Deny Because They Were Previously Rejected And No New Information Was Provided

We propose denying exemptions from the following 8 requirements because they were previously rejected and sectors provided no new information in support: (39) Minimum fish sizes, to allow 100-percent retention; (40) minimum fish sizes, to retain 12-inch (30.5-cm) yellowtail flounder; (41) that VMS messages be sent directly to NMFS; (42) weekly catch report requirements; (43) no pair trawling; (44) minimum hook size; (45) 6.5-inch (16.5-cm) minimum mesh size for trawls to allow 5-inch (12.7-cm) mesh when targeting redfish; and (46) submitting a roster by the deadline. Exemptions 39 through 46 are not analyzed in the EA because no new information was available to change the analyses previously published in past EAs. The details of these exemption requests, analysis of these exemptions, and the reasons they were previously denied are contained in the final rules approving sectors for FYs 2010 and 2011, and their accompanying EAs. The requesting sectors have provided no new information, justification, rationale, or mitigation to address these concerns. Accordingly, we proposed to deny these exemptions in this rule.

Requested Exemptions We Proposed to Deny Because They May Jeopardize Rebuilding Of The GOM Cod Stock

We propose denying exemptions from the following 3 requirements because they may jeopardize rebuilding of the GOM cod stock, which a new stock assessment has determined is overfished and experiencing overfishing: (47) April GOM Rolling Closure Area; (48) May GOM Rolling Closure Area; and (49) June GOM Rolling Closure Area.

NMFS denied requests for additional exemptions from GOM Rolling Closure Areas in FYs 2010 and 2011 because of concerns that directly targeting spawning aggregations can adversely impact the reproductive potential of a stock, as opposed to post-spawning mortality. In addition, those requests were disapproved because the existing GOM Rolling Closure Areas provide some protection to harbor porpoise and other marine mammals.

In response to requests for additional exemptions from GOM Rolling Closure Areas (including new exemption requests that would exclude gillnet gear) and discussions about increasing access to these areas at the Council's Lessons Learned Sector Workshop, the Regional Administrator considered proposing partial exemption from some of the closures as a short-term solution while the Council considered the long-term future of these closures as part of the pending omnibus habitat amendment. Options considered for possible exemptions would have required trawl vessels to use selective trawl gears, excluded gillnet gear, and prohibited hook gear from using squid or mackerel as bait. However, given the new status of the GOM cod stock, no additional exemptions from the GOM RCAs are proposed in this rule.

#### Deadline To Join A Sector For FY 2012

The regulations currently provide that each sector must submit a final roster to NMFS by December 1, prior to the FY in which the sector intends to begin operations, unless otherwise instructed by NMFS. The deadline for FY 2012 was previously announced as December 1, 2011, or April 30, 2012, for permits that changed ownership after December 1. NMFS is

extending the FY 2012 sector roster deadline for all permits through April 30, 2012. This opportunity is being provided to address concerns raised at the January 31 – February 2, 2012, Council meeting regarding the recent GOM cod assessment and the potential disproportional impacts on the inshore GOM fleet due to the common pool trimester quotas that go into effect on May 1, 2012. The GOM cod stock assessment was not available before the December 1 deadline and indicates the need for a significant reduction in the ACL for this stock. Because permit holders were not aware of this significant reduction before the deadline, NMFS has determined that extending the deadline is appropriate to allow these vessels to reconsider whether to join a sector in light of the new assessment. Please note, however, that it is at the sector's discretion as to whether it will allow new members to join their sector for FY 2012.

#### Sector EA

The Administrative Procedure Act (5 U.S.C. 553) requires advance notice of rulemaking and opportunity for public comment. NMFS is providing a 15-day comment period for this rule. A longer comment period would be impracticable and contrary to the public interest because a final rule must be published prior to the start of FY 2012 on May 1. Vessels enrolled in a sector may not fish in FY 2012 unless their sector operations plan is approved. Therefore, if the final rule is not published prior to May 1, the permits enrolled in sectors must either stop fishing until their operations plan is approved, or elect to fish in the common pool for the entirety of FY 2012. Both of these options would have negative impacts for the permits enrolled in the sectors.

In order to comply with NEPA, one EA was prepared encompassing all 19 operations plans. The sector EA is tiered from the Environmental Impact Statement (EIS) prepared for Amendment 16. The EA examines the biological, economic, and social impacts unique to each sector's proposed operations, including requested exemptions, and provides a cumulative effects

analysis (CEA) that addresses the combined impact of the direct and indirect effects of approving all proposed sector operations plans. The summary findings of the EA conclude that each sector would produce similar effects that have non-significant impacts. Visit <http://www.regulations.gov> to view the EA prepared for the 19 sectors that this rule proposes to approve.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This action is exempt from review under Executive Order (E.O) 12866.

The Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 601-612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. Size standards have been established for all for-profit economic activities or industries in the North American Industry Classification System. The SBA defines a small business in the commercial fishing and recreational fishing sector, as a firm with receipts (gross revenues) of up to \$4 million.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared, as required by section 603 of the RFA. The Final Regulatory Flexibility Analysis (FRFA) will be prepared after the comment period for this proposed rule, and will be published with the final rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small

entities. The IRFA consists of this section, the SUMMARY section of the preamble of this proposed rule, and the EA prepared for this action. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in Sections 1.0, 2.0, and 3.0 of the EA prepared for this action, and is not repeated here. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

This action will likely affect 843 entities, which represents the number of permits enrolled in sectors that have requested additional exemptions. Each of these permits would be considered a small entity, based on the definition as stated above. The economic impact resulting from this action on these small entities is positive, since the action, if implemented, would provide additional operational flexibility to vessels participating in NE multispecies sectors for FY 2012. In addition, this action would further mitigate negative impacts from the implementation of Amendment 16, FW 44, and FW 45, which have placed additional effort restrictions on the groundfish fleet.

#### Description of the Reasons Why Action by Agency is Being Considered

The flexibility afforded sectors includes exemptions from certain specified regulations as well as the ability to request additional exemptions. Sector members no longer have groundfish catch limited by DAS allocations and are instead limited by their available ACE. In this manner, the economic incentive changes from maximizing the value of throughput of all species on a DAS to maximizing the value of the sector ACE, which places a premium on timing landings to market conditions, as well as changes in the selectivity and composition of species landed on fishing trips. Further description of the purpose and need for the proposed action is contained in Section 2.0 of the EA prepared for this action.

Over the past decade, there has been a significant amount of consolidation in the NE groundfish fishery in response to management measures to end overfishing of, and to rebuild, groundfish stocks. The number of active vessels steadily declined during the period 2007-2010. The number of active groundfish vessels making any fishing trips declined by 16.8 percent between 2007 (1,082 vessels) and 2010 (900 vessels). A 7.5-percent decline (i.e., 73 vessels) occurred between 2009 and 2010. Similarly, from 2007 to 2010 there was a 31.6-percent decline in the number vessels making at least one groundfish trip (658 to 450), with a 20.5% reduction (116 vessels) between 2009 and 2010. It is not possible to reliably identify the cause for the reduction in the number of active vessels that has been occurring for a number of years, including before 2007.

Amendment 13 implemented DAS leasing and transfer programs, allowing vessels to fish the DAS of multiple other vessels. Amendment 16 implemented a number of measures that facilitated the consolidation of fishing effort to fewer active fishing vessels as a means to reduce the operational expenses for owners of multiple permits. For example, that action allows owners of permits held in CPH and not associated with an actual fishing vessel to participate in sectors (i.e., contribute the CPH's landing history to calculate a sector's yearly allocation of ACE) and lease DAS. Further, it is not possible to identify the extent to which inactive vessels in sectors may benefit if other sector vessels harvest their allocation.

In 2010, 447 vessels (33 percent) were inactive (no landings). Of these inactive vessels, 296 were sector vessels and 151 were common pool vessels. The number of inactive vessels in 2010 can be compared to the number of inactive vessels in other years: 331 vessels (32 percent) in 2007, 398 vessels (28 percent) in 2008, and 408 vessels (30 percent) in 2009. Some vessel inactivity may be due to participation in DAS leasing or transfer programs and/or internal sector

management decisions. Data are not currently available to evaluate how inactive vessels in sectors may have benefited from agreeing to have other vessels catch the sector's allocation.

The recent implementation of ACLs and accountability measures (AM), and the expanded use of sectors under Amendment 16, has affected fishing patterns in ways that cannot yet be quantified and analyzed. Sector measures were intended to provide a mechanism for vessels to pool harvesting resources and consolidate operations in fewer vessels, if desired, and to provide a mechanism for capacity reduction through consolidation. Reasons why fewer vessels fished in FY 2010, in comparison to FY 2009, may be related to owners with multiple vessels fishing fewer vessels. It is also likely that some vessels that have not landed groundfish have received revenue from leasing their groundfish allocation or have been fishing in other fisheries. Thus, fewer vessels are actively fishing for, and landing, regulated species and ocean pout, with 10 percent of the fishing vessels earning more than half of the revenues from such stocks since 2005, leading to a seemingly continuing trend of consolidation in the fishery. However, this trend began before the implementation and expansion of the sector program, and based on limited data available to date, the trend is not significantly out of proportion to FYs prior to the expansion of sector management by Amendment 16.

#### The Objectives and Legal Basis for the Proposed Action

The objective of the proposed action is to authorize the operations of 19 sectors in FY 2012, and to allow the benefits of sector operations to accrue to 843 permits enrolled in sectors and the New England communities where they dock and land. The legal basis for the proposed action is the NE Multispecies FMP and promulgating regulations at § 648.87.

#### Estimate of the Number of Small Entities



The SBA size standard for commercial fishing (North American Industry Classification System code 114111) is \$4 million in annual sales. Available data indicate that, based on 2005-2007 average conditions, median gross annual sales by commercial fishing vessels were just over \$200,000, and no single fishing entity earned more than \$2 million annually. Although NMFS acknowledges there may be entities that, based on rules of affiliation, would qualify as large business entities, due to lack of reliable ownership affiliation data we cannot apply the business size standard based on affiliation at this time. For this action, since available data are not adequate to identify affiliated vessels, each operating unit is considered a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities. The maximum number of entities that could be affected by the proposed exemptions is 843 permits - the number of vessels enrolled in the 19 sectors that have submitted an operations plan for FY 2012. Since individuals may withdraw from a sector at any time prior to the beginning of FY 2012, the number of permits participating in sectors on May 1, 2012, and the resulting sector ACE allocations, are likely to change. Additionally, new permit holders who acquire their permits through an ownership change that occurred after December 1, 2011, may enroll their permit in a sector or change the permit's sector affiliation through April 30, 2012.

#### Reporting, Recordkeeping and Other Compliance Requirements

This proposed rule contains no collection-of-information requirement subject to the Paperwork Reduction Act. The proposed action reduces reporting requirements compared to the no-action alternative. Exemptions implemented through this action would be documented in a LOA issued to each vessel participating in an approved sector. The exemptions from the 20-day spawning block and the 120-day gillnet block would reduce the reporting burden for sector

vessels, because exemptions from these requirements eliminate the need to report the blocks to the NMFS Interactive Voice Response system.

Sector vessels receiving an exemption from the gillnet limit (up to 150 nets) would also be exempt from current tagging requirements, and would instead be required to tag gillnets with one tag per net. Compliance with the tagging requirement would not necessarily require sector vessels to purchase additional net tags, as each vessel is already issued up to 150 tags. However, sector vessels that have not previously purchased the maximum number of gillnet tags may find it necessary to purchase additional tags to comply with this requirement at a cost of \$1.20 per tag.

The exemption to allow a vessel to haul another vessel's gillnet gear would require each vessel to tag all gear it is authorized to haul. Because of the existing 150-tag limit, no additional tags could be purchased.

The exemption from the limit on the number of hooks does not involve reporting requirements, but may result in increased costs for hooks and rigging (groundline, gangions, anchors) if a vessel chooses to increase the amount of gear fished. Circle hooks of the legal minimum size (12/0) cost about \$0.19 each without rigging.

The GOM Sink Gillnet exemption does not involve additional reporting requirements. However, to fully utilize this exemption, sector vessels would need to purchase 6-inch (15.2-cm) mesh gillnet nets. At the time this IRFA was prepared, no cost information was available for a 6-inch (15.2-cm) mesh gillnet panel. However, the cost of a 6.5-inch (16.5-cm) mesh 300-ft (91.4-m) gillnet panel, complete with floats and break-away links, is estimated at \$310. The quantity of 6-inch (15.2-cm) mesh gillnets purchased by a vessel to participate in this program would depend on the vessel's gillnet designation (a Day gillnet vessel would have a 150-net limit) and

the perceived economic benefits of utilizing the exemption, which may be based on market conditions.

Exempting sectors from the requirement to submit a daily catch report for all vessels participating in the CA I Hook Gear Haddock SAP will not change the reporting burden of individual participating vessels, as the vessels would merely change the recipient of their current daily report.

Other exemptions proposed in this action involve no additional reporting requirements. Sector reporting and recordkeeping regulations do not exempt participants from state and Federal reporting and recordkeeping, but are mandated above and beyond current state and Federal requirements. A full list of compliance, recording, and recordkeeping requirements can be found in the final rules implementing Amendment 16, each approved FY 2011 sector operations plan, and in the draft FY 2012 sector operations plans.

#### Duplication, Overlap or Conflict with other Federal Rules

The proposed action is authorized by the regulations implementing the NE Multispecies FMP. It does not duplicate, overlap, or conflict with other Federal rules.

#### Alternatives which Minimize any Significant Economic Impact of Proposed Action on Small Entities

The proposed action would create a positive economic impact for the participating sector vessels because it would mitigate the impacts from restrictive management measures implemented under NE Multispecies FMP. Little quantitative data on the precise economic impacts to individual vessels is available. The 2010 Final Report on the Performance of the Northeast Multispecies (Groundfish) Fishery (May 2010 – April 2011) (copies are available from NMFS, see ADDRESSES) documents that all measures of gross revenue per trip and per day

absent in 2010 were higher for the average sector vessel and lower for the average common pool vessel. However, the report stipulates this comparison is not useful for evaluating the relative performance of DAS and sector-based management because of fundamental differences between these groups of vessels, which were not accounted for in the analyses. Accordingly, quantitative analysis of the impacts of sector operations plans is still limited. NMFS anticipates that by switching from effort controls of the common pool regime to operating under a sector ACE, sector members will remain economically viable while adjusting to changing economic and fishing conditions. Thus, the proposed action provides benefits to sector members that they would not have under the No Action Alternative.

#### Economic Impacts on Small Entities Resulting from Proposed Action

The EIS for Amendment 16 compares economic impacts of sector vessels with common pool vessels and analyzes costs and benefits of the universal exemptions. The final rule for the approval of the FY 2010 sector operations plans and contracts (75 FR 18113, April 9, 2010) and its accompanying EAs discussed the economic impacts of the exemptions requested by sectors that year. The final rule for the supplemental sector rule (75 FR 80720, December 23, 2010) and its accompanying supplemental EA discussed the impacts of additional exemptions requested by sectors. The final rule for the approval of the FY 2011 sector operations plans and contracts (76 FR 23076, April 25, 2011) and its accompanying EA discussed the economic impacts of the exemptions requested by sectors that year.

The EA prepared for this rule evaluates the impacts of each exemption individually relative to the no-action alternative (i.e., no sectors are approved), and the exemptions may be approved or disapproved individually or as a group. The impacts associated with the implementation of each of the exemptions proposed in this rule are analyzed as if each

exemption would be implemented for all sectors; however, each exemption will only be implemented for the sector(s) which requested that exemption.

Increased “operational flexibility” generally has positive impacts on human communities as sectors and their associated exemptions grant fishermen some measure of increased operational flexibility. By removing the limitations on vessel effort (amount of gear used, number of days declared out of fishery, trip limits and area closures) sectors help create a more simplified regulatory environment. This simplified regulatory environment grants fishers greater control over how, when, and where they fish, without working under increasingly complex fishing regulations with higher risk of inadvertently violating one of the many regulations. The increased control granted by the sectors and their associated exemptions may also allow fishermen to maximize the ex-vessel price of landings by timing them based on the market. Generally, increased operational flexibility can result in reduced costs and/or increased revenues. All exemptions contained in the proposed FY 2012 sector operations plans are expected to generate positive social and economic effects for sector members and ports. In general, profits can be increased by increasing revenues or decreasing costs. Similarly, profits decrease when revenues decline or costs rise. The following discussion concentrates on cost and revenues in order to focus on the mechanism by which profits are expected to change due to the exemptions granted by this action.

#### Exemption From The Day Gillnet 120-Day Block Out Of The Fishery

Existing regulations require that vessels using gillnet gear remove all gillnet gear from the water for 120 days per year. Under an output-control management system, this type of input control is unnecessary. Many affected vessel owners have purchased additional vessels in order to be able to fish continuously. The exemption from the 120-day block allows sector members to

reduce costs by retiring the redundant vessel. Furthermore, this exemption may allow sector vessels to take advantage of other exemptions, such as the exemption from the GB Seasonal Closure in May and portions of the GOM Rolling Closure Areas.

#### Exemption From The 20-Day Spawning Block Out Of The Fishery

Exemption from the 20-day spawning block would improve operational flexibility by allowing participants to match trip planning decisions to environmental and economic conditions. The increased operational flexibility may result in higher revenues (improved timing of delivery to market) or lower costs for participating vessels.

#### Exemption From The Limit On The Number Of Nets For Day Gillnet Vessels

This exemption would increase operational flexibility by allowing participating sector members to deploy fishing gear according to operational and market needs. The increased flexibility is likely to result in higher revenues or lower costs for participating vessels.

#### Exemption From The Prohibition On A Vessel Hauling Another Vessels' Gillnet Gear

This community fixed-gear exemption would allow sector vessels in the Day gillnet category to share gillnet gear. This exemption would reduce the total amount of gear that would have to be purchased and maintained by participating sector members, resulting in lower costs and possibly lower amount of gear fished.

#### Exemption From The Limitation On The Number Of Gillnets That May Be Hauled On GB When Fishing Under A Groundfish/Monkfish DAS

This exemption would increase operational flexibility by allowing a sector vessel to haul its monkfish gillnets and groundfish gillnets on the same trip. This exemption may reduce costs for these sector participants.

#### Exemption From The Limitation On The Number Of Hooks That May Be Fished

This exemption would increase operational flexibility by allowing operators to adapt to environmental and economic conditions. This exemption may result in higher revenues or reduced costs.

#### Exemption From DAS Leasing Program Length And Horsepower Restrictions

This exemption would increase operational flexibility by allowing participating sector members to deploy fishing gear according to operational and market needs. The increased operational flexibility is likely to result in either higher revenues or lower costs for participating vessels. Because DAS are not required while fishing for groundfish, vessels participating in other fisheries (e.g., monkfish) which require the use of DAS are likely to be positively impacted by this exemption.

#### GOM Sink Gillnet Exemption (January Through April)

This exemption would allow sector members to use 6-inch (15.2-cm) mesh gillnets in the GOM RMA from January 1, 2013, through April 30, 2013. This exemption will allow participating sector vessels to retain more GOM haddock and increase revenues. To take advantage of this exemption, participating sector vessels would need to purchase 6-inch (15.2-cm) mesh gillnets; however, this gear change would be voluntary and the gear would be adopted only if the vessels anticipated positive returns from the switch. In FY 2010, 34.7 percent of the available GOM haddock ACE was not caught.

#### GOM Sink Gillnet Exemption (May)

This exemption would allow vessels to use 6-inch mesh gillnets in the GOM RMA from May 1, 2012, through May 31, 2012. This exemption will allow participating sector vessels to retain more GOM haddock and increase revenues. To take advantage of this exemption, participating sector vessels will need to purchase 6-inch mesh gillnets; however, this gear change

would be voluntary and this gear would be adopted only if anticipated higher profits. In FY 2010, 34.7% of the available GOM haddock ACE was not caught.

#### Exemption From Prohibition Of Discarding Legal-Size Allocated Species

Sector vessels are required to retain legal-size unmarketable fish, which must be stored on the vessel while at sea. This requirement may create unsafe work conditions and reduce safety at sea. In addition, sector vessels must determine a method of disposal for landed unmarketable fish. An exemption from this regulation would allow sector vessels to discard unmarketable fish, increasing flexibility, improving safety conditions at sea, and reducing costs associated with disposing of the landed unmarketable fish.

#### Exemption From The Requirement That The Sector Manager Submit Daily Catch Reports For The CA I Hook Gear Haddock SAP

Eliminating the daily catch reporting by sector managers would reduce the administrative burden on the sector managers. The reporting burden of individual participating vessels remains unchanged. In addition to reducing administrative burden, this exemption may result in slightly lower operating costs for sectors.

#### Exemption From The Trawl Gear Requirements In The U.S./Canada Management Area

This exemption would allow the use of any groundfish trawl gear, rather than approved conservation gears, provided the gear conforms to regulatory requirements for using trawl gear to fish for groundfish in the GB RMA. This exemption would result in greater operational flexibility to participating sector vessels. This increased operational flexibility may translate into lower costs if vessels can reduce the amount of gear, effort or type of gear necessary to catch groundfish in the U.S./Canada Management Area.

#### Exemption From The Requirement To Power A VMS While At The Dock



Maintaining a VMS signal while at the dock, or tied to a mooring, requires constant power be delivered to the vessel or constant use of onboard generators. This exemption will reduce the operating costs for fishing operations and would result in some improved profitability.

Exemption From DSM Requirements For Handgear A-Permitted Sector Vessels,

Vessels Fishing West Of 72°30' W. Long., And Vessels On Monkfish DAS When Using 10-inch (25.4-cm) Or Greater Mesh In The Monkfish SFMA

FW 45 revised DSM requirements and stipulated that sectors must comply with any DSM program specified by NMFS in FY 2012. For FY 2012 there is no required DSM coverage because NMFS will not be funding DSM. This exemption would reduce the regulatory cost and burden of any DSM coverage level above zero. The vessels qualifying for these exemptions generally are the smallest operations, or have the smallest amount of groundfish catch, and so would otherwise be disproportionately burdened compared to larger operations.

Exemption From Seasonal Restriction For The Eastern U.S./ Canada Haddock SAP

The Eastern U.S./ Canada Haddock SAP was implemented by FW 40A in 2004 to provide an opportunity to target haddock. In 2006, FW 42 shortened the season of this SAP to August 1 through December 31 to reduce cod catch. For sector vessels, the SAP provides access to the northern tip of CA II, which may increase haddock catch and revenue for fishermen.

Exemption From Seasonal Restriction For The CA II Yellowtail Flounder/ Haddock SAP

The CA II Yellowtail Flounder/ Haddock SAP was implemented by Amendment 13 in 2004 to provide an opportunity to target yellowtail flounder in CA II. In 2005, FW 40B shortened the season of this SAP to July 1 through December 31 to reduce interference with spawning yellowtail flounder. Amendment 16 further revised this SAP to allow participating vessels to target haddock from August 1 through January 31. This exemption would increase a

sector's operational flexibility and efficiency by allowing the opportunity to fish year-round in the SAP area. It could allow for a greater catch of haddock and increased revenues for fishermen.

#### Exemption From The Prohibition On Fishing Inside And Outside The CA I Hook Gear Haddock SAP While On The Same Trip

FW 40A established the CA I Hook Gear Haddock SAP. Multispecies vessels fishing on a trip within this SAP are prohibited from deploying fishing gear outside of the SAP on the same trip when they are declared into the SAP. This exemption would increase operational flexibility by allowing sector vessels to fish both inside and outside the SAP on the same trip. This exemption would reduce costs by reducing the amount of travel time to haul gear in the SAP and in other areas.

#### Exemption From The Maximum ACE Carryover Provision

Each sector is allowed to carry over up to 10 percent of its original ACE allocation of each stock from one fishing year to the next, with the exception of GB yellowtail flounder, to reduce the possibility that a sector may accidentally exceed its allocation while trying to utilize its entire ACE. Allowing sectors to carry over a larger portion of their ACE would provide for greater operational flexibility in when and how they fish during a given fishing year. This could increase revenues of sectors which frequently catch less than 90% of their ACE allocations.

#### Exemption From The ACE Buffer Provision

At the beginning of each fishing year, NMFS withholds 20 percent of a sector's ACE for each stock for a period of up to 61 days, or longer. Exemption from this provision would increase operational flexibility by allowing more ACE to be available at the beginning of the

fishing year. This effect is expected to be greatest for stocks which are seasonally available early in the fishing year.

#### Exemption From The 6.5-Inch (16.5-Cm) Minimum Mesh Size Requirement For Trawl Nets

This exemption would allow sector vessels to use 6-inch (15.2-cm) mesh codends on trawl nets to target redfish. The exemption could increase the operational flexibility of sector vessels and could increase revenues of sector fishermen if they are able to increase the catch rate of redfish.

#### Exemption From The 18-Inch (45.7-Cm) Minimum Fish Size Provision For Haddock

This restriction includes whole fish or any part of a fish while possessed on board a vessel, with the exception of a small amount of fish (up to 25 lb (11.3 kg)) that each person on board may retain for at-home consumption. This exemption would increase operational flexibility by allowing vessels to land headed and gutted haddock which are less than 18 inches (45.7 cm). Vessels would be able to store more fish in the hold and may land more edible meat by processing and removing undesirable parts of the fish at sea. Vessel revenues increase if higher prices are received for processed fish. However, few vessels are currently equipped to take advantage of this exemption. Other vessels would need to make voluntary upgrades to their vessels in order to take advantage of this regulation.

#### Exemption From The Prohibition On A Vessel Hauling Another Vessel's Hook Gear

This exemption would reduce the total amount of gear that would have to be purchased and maintained by participating sector members, resulting in lower costs and a possible reduction in total gear fished.

#### Exemption From The Requirement To Declare Intent To Fish In The Eastern U.S./ Canada SAP And The CA II Yellowtail Flounder/ Haddock SAP Prior To Leaving The Dock

Multispecies vessels are currently required to declare that they will be fishing in the Eastern U.S./ CA Haddock SAP or the CA II Yellowtail Flounder/ Haddock SAP prior to leaving the dock. The requested exemption would reduce the administrative burden of declaring intent to fish and increase operational flexibility by allowing the vessel to make trip planning decisions while at-sea. This exemption could reduce costs by reducing the amount of travel time to fish in the SAP without first returning to port.

#### Other Significant Alternatives

There were several exemptions requested by the sectors for FY 2012 that the regulations implemented by Amendment 16 prohibited NMFS from considering. NMFS also received requests for exemptions that NMFS previously disapproved in FY 2010 or FY 2011; however, no new data or information has become available that would convince NMFS to reconsider the previously disapproved exemptions further in FY 2012.

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties the opportunity to comment on proposed sector operations plans and TAC allocations.

Authority: 16 U.S.C. 1801 et seq.

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